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**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

MDD/158208

PRELIMINARY RECITALS

Pursuant to a petition filed April 10, 2014, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Kenosha County Human Service Department in regard to Medical Assistance, a hearing was held on July 08, 2014, at Kenosha, Wisconsin.

The issue for determination is whether the DDB correctly denied the Petitioner's application for Disability-based Medicaid Benefits (Medical Assistance/Health Insurance).

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

█
█

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703
By: DDB by file

ADMINISTRATIVE LAW JUDGE:

Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Kenosha County.
2. In August 2013, the Petitioner applied for Disability based Medicaid Benefits, asserting that he had become disabled because of congestive heart failure and a learning disability. In the application the Petitioner also indicated that he had a pacemaker and diabetes. (DDB file; Petitioner's testimony)

3. The Disability Determination Bureau (the DDB) denied the Petitioner's application on March 5, 2014. (DDB file; Petitioner's testimony)
4. On April 10, 2014, the Petitioner filed for reconsideration asserting that he had a pacemaker, insomnia and fatigue. (DDB file; Petitioner's testimony.)
5. On May 30, 2015, the DDB again denied the Petitioner's application and on June 9, 2014, the DDB forwarded the file to the Division of Hearings and Appeals for review. (DDB file)
6. Petitioner is 34 years old; he completed the 12th grade and can read and speak English without a problem. (DDB file; Petitioner's testimony)
7. Petitioner last worked in October 2012; for twelve years prior to that, the Petitioner was employed in fast paced jobs, in the restaurant industry, working as a dishwasher and cook. (DDB file-Petitioner's Work History Report)
8. The Petitioner is able to independently complete activities of daily living, such as transferring out of bed or a chair, bathing, grooming, toileting, eating and moving about his home, but these tasks may take him longer to complete than an otherwise healthy person. (Testimony of Petitioner)
9. Although Petitioner has diabetes and has been taken to the emergency room for high blood sugar, he has not yet had any significant, disabling complications. (Testimony of Petitioner)
10. Petitioner has a history of sarcoidosis (an inflammatory disease), cardiomyopathy (heart disease) and a learning disability. (DDB file - United Hospital System note 4/1/14)
11. Petitioner was living in a nursing home, but has since been discharged. (DDB file - April 8, 2014 medical note)

DISCUSSION

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. In order to be eligible for Medicaid as a disabled person, an applicant must meet the same tests for disability as those used by the Social Security Administration to determine disability for Supplemental Security Income (Title XVI benefits). § 49.47(4)(a)4, *Wis. Stats.* Title XVI of the Social Security Act defines "disability" as the inability to engage in any substantial gainful activity due to physical or mental impairments which can be expected to either result in death or last for a continuous period of not less than 12 months.

Although the determination of disability depends upon medical evidence, it is not a medical conclusion; it is a legal conclusion. The definitions of disability in the regulations governing MA require more than mere medical opinions that a person is disabled in order to be eligible. There must be medical evidence that an impairment exists, that it affects basic work activities, that it is severe, and that it will last 12 months or longer as a severe impairment. Thus, while the observations, diagnoses, and test results reported by the Petitioner's physicians are relevant evidence in determining impairment, the doctors' opinions as to whether the petitioner is disabled for the purposes of receiving MA are not relevant.

According to the DDB Disability Determination Report, the DDB found that the Petitioner does not have a severe mental impairment. However, according to that same report, the DDB found Petitioner to suffer from a severe physical impairment that will last 12 months or longer. The DDB also found that despite the impairment, the Petitioner is still able to engage in substantial meaningful activity based upon the tests described below.

Under the regulations established to interpret Title XVI, a claimant's disability must meet the 12-month durational requirement before being found disabling. In addition, the disability must pass five sequential tests established in the Social Security Administration regulations. Those tests are as follows:

1. An individual who is working and engaging in substantial gainful activity will not be found to be disabled regardless of medical findings. *20 CFR 404.1520 (b)*.
2. An individual who does not have a "severe impairment" will not be found to be disabled. A condition is not severe if it does not significantly limit physical or mental ability to do basic work. *20 CFR 416.921(c)*.
3. If an individual is not working and is suffering from a severe impairment which meets the duration requirement and meets or equals a listed impairment in Appendix I of the federal regulations, a finding of disabled will be made without consideration of vocational factors (age, education, and work experience.) *20 CFR 404.1520(d)*.
4. If an individual is capable of performing work he or she has done in the past, a finding of not disabled must be made. *20 CFR 404.1520(f)*.
5. If an individual's impairment is so severe as to preclude the performance of past work, other factors, including age, education, past work experience and residual function capacity must be considered to determine if other types of work the individual has not performed in the past can be performed. *20 CFR 404.1520(g)*.

These tests are sequential. If it is determined that an applicant for MA is employed or does not suffer from a severe impairment it is not necessary to proceed to analyze the next test in the above sequence.

TEST 1

The first test asks whether an individual is working and engaging in substantial gainful activity.

“Substantial activity” is defined as, “work activity that involves doing significant physical or mental activities. Your work may be substantial, even if it is done part time basis.....” *20 CFR 404.1572(a)*

“Gainful work activity” is defined as, “work activity that you do for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized.” *20 CFR 404.1572(b)*

Petitioner is not working and has not worked in over two years. As such, he passes test 1.

TEST 2

Petitioner passes test 2 because the DDB found that he does have a severe impairment.

TEST 3

The question presented here is whether petitioner’s impairment meets the criteria listed in Appendix 1 to Subpart P of Part 404 of Code of Federal Regulation (CFR). This is more commonly referred to as the “listing”. If Petitioner meets the aforementioned criteria, tests 4 and 5 do not need to be done; he qualifies as disabled. If Petitioner does not meet the listing criteria, then he must pass tests 4 and 5 to be considered disabled.

Petitioner testified that his primary complaint was his heart condition. Appendix 1, subsection 4.00 deals with impairments caused by disease of the cardiovascular system. Petitioner does not meet the criteria in this section because he has not been diagnosed with chronic heart failure, decreased blood flow that has cause fainting or near fainting (syncope), recurrent arrhythmias with cyanosis (discoloration of skin or

mucous membranes from lack of oxygen), aneurisms, or any disease of the veins or arteries. There is also no assertion or indication in the record that the Petitioner has had a heart transplant.

A medical note in the DDB file dated April 1, 2014, does not note any of these issues, but indicates that the petitioner had non-ischemic cardiomyopathy, indicating that his blood flow wasn't an issue with his heart disease. That same medical note also indicating that the Petitioner's breathing was fair, his respiratory exam was normal, and that he had no cyanosis (discoloration due to lack of oxygen) in his extremities.

An April 8, 2014 medical note indicated that the Petitioner's cardiac condition was stable, even though he had previously suffered congestive heart failure due to the cardiomyopathy. The April 8, 2014 note again indicated that there was no cyanosis.

Based upon the foregoing, it is found that Petitioner does not meet the listings under Appendix 1 to Subpart P of Part 404 of Code of Federal Regulation. Therefore, it is necessary to proceed to tests 4 and 5.

TEST 4

The fourth test asks whether Petitioner is capable of work he performed in the past. Per *40 CFR 404.1560 (b)(1)*, the question, more specifically, is did Petitioner engage in substantial gainful activity (significant physical or mental activities for which she could have been paid) within the past 15 years, and if so, can Petitioner continue to perform that work?

The Petitioner indicated in his testimony that between 2000 and 2012 he worked a fast paced job in the restaurant industry washing dishes and cooking. In his Medicaid application he indicated that he lifted up to 20 pounds in this job.

Looking at the DDB Determination reports, it appears that the DDB agrees that the Petitioner is unable to return to his former employment. Thus, the Petitioner passes test 4.

TEST 5

This test asks whether Petitioner can perform any other work, despite her disability. This is often referred to as a residual functional capacity.

The DDB determined that the Petitioner is able to perform light work, but must avoid climbing ladders, ropes and scaffolds and he must avoid magnetic fields due to his pacemaker.

The definition of light work is found at 20 C.F.R. § 404.1567 and provides as follows:

(b) *Light work*. Light work involves lifting no more than 20 pounds at a time with frequent lifting or carrying of objects weighing up to 10 pounds. Even though the weight lifted may be very little, a job is in this category when it requires a good deal of walking or standing, or when it involves sitting most of the time with some pushing and pulling of arm or leg controls. To be considered capable of performing a full or wide range of light work, you must have the ability to do substantially all of these activities. If someone can do light work, we determine that he or she can also do sedentary work, unless there are additional limiting factors such as loss of fine dexterity or inability to sit for long periods of time.

The Petitioner testified that he cannot walk or sit for long periods of time, but the April 1, 2014 medical note indicated that the Petitioner "walked a lot". In the physical activities addendum, the Petitioner indicated that he can sit for two hours, stand for ten minutes and walk for 15 minutes before needing a break and that his physicians have not put a limit on the amount he can lift.

Based upon the foregoing, petitioner's age, education and the residual functional capacity chart found at *Part 404, Subpart P, Appendix 2, part 202.21*, it is found that the DDB correctly determined that the Petitioner is able to perform light. Petitioner does NOT pass test 5. Therefore, Petitioner is not considered legally disabled for the purposes of receiving Medicaid Disability benefits.

The Petitioner indicated that he had misunderstood the purpose of this hearing and that he wished to apply for Social Security Disability Income. Petitioner was told that he needed to contact the Social Security Administration to file that application.

The Petitioner might wish to contact Legal Action of Wisconsin for assistance with his application for Social Security Disability Income. The can be reached at 1- [REDACTED].

CONCLUSIONS OF LAW

The DDB correctly denied the Petitioner's application for Disability-based Medicaid Benefits (Medical Assistance/Health Insurance).

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

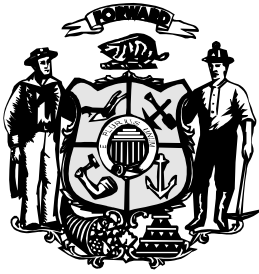
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson

Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,
Wisconsin, this 15th day of July, 2014.

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 15, 2014.

Kenosha County Human Service Department
Disability Determination Bureau